

**Monsanto**

CONFIDENTIAL 92-CV-204-WDS

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December 31, 1991

Via Federal Express

Michael L. Rodburg  
Lowenstein, Sandler, Kohl,  
Fisher & Boylan  
65 Livingston Ave.  
Roseland, NJ 07068-1791

Re: Cerro Copper Products--Dead Creek, Sauget, Illinois

Dear Mike:

We have reviewed your November 26, 1991 correspondence on the matter referenced above. It does build upon our past conversations and demonstrates a basic framework which may be useful to resolve our mutual differences on this matter. Since our last communication on this issue, Monsanto has continued its work on that portion of Dead Creek south of Cerro's property at a location commonly referred to as "Sector B." Given the early results from that work, we believe that an opportunity does exist for Cerro and Monsanto to proceed in a cooperative fashion, though not with the immediate payment of money as discussed in your most recent correspondence.

We hope you understand that we must disagree with several of the assertions which are contained in your letter. The portion of Dead Creek which Cerro cleaned up on its own property, commonly referred to as "Sector A", has not served as a conduit for Monsanto wastewater discharges for over half a century. Indeed, once sewers were installed in that area during the 1930's, flows into Sector A would have been expected to come from Cerro's own discharges. Cerro's Final Report on the removal project notes in Section 3.1 that the majority of Cerro's own facility runoff in storms was directed to Dead Creek and in the event of a "heavy storm," the Village of Sauget's sewer system would back up into Dead Creek. However, even when the Village of Sauget sewer did back up, the design of the sewer system is such that Monsanto's flows would not be expected to be part of the backup and overflow into Sector A. Any involvement of Monsanto engineers with the design of flows into Sector A were generally done in conjunction

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with municipal sewer work in the Village of Sauget, work with which Cerro itself was also involved.

As for the possible impacts on cleanup costs from PCBs, PCB manufacturing precursors and other organics, it should be noted that multiple sources of such material are possible. For instance, as to the PCBs, Cerro itself no doubt utilized considerable quantities of hydraulic fluids which contained PCBs with the likelihood of leaks and spills being washed into Sector A. This discussion is not meant to be a debate at this time over the strengths of our respective positions. It is simply to indicate that arguments do exist on both sides.

One other matter which we feel compelled to address at this point is the cost of the stormwater diversion. It is our understanding that this work would have been necessary even if the response action had not been taken. Accordingly, this appears to be a matter which directly and solely benefits Cerro, irregardless of any action taken as to Sector A.

Beyond the specific disputes which we may have between Cerro and Monsanto, Monsanto does not feel that it can be asked to pay a larger share than Cerro for activities which Cerro undertook at its own initiative and on its own property without prior consultation of Monsanto. These activities accrued considerable benefits solely for Cerro, its property and possible future uses of that property.

However, we do recognize a potential benefit to both Monsanto and Cerro to look for a way by which the companies can proceed in a cooperative manner on broader concerns in the Sauget area. This is especially true for the area around Cerro's plant which the Illinois Environmental Protection Agency (IEPA) commonly refers to as "Area I" of Dead Creek Project. In addition to Sector A, several sites in that area are, of course, also owned at least in part by Cerro.

One site in Area I which Monsanto is now assessing is Sector B. The purpose of this assessment is to determine if any remedial action is appropriate. Given the proximity of Sector B to Sector A, as well as the other Area I sites, it remains difficult to settle Sector A in isolation without any reference to Sector B or the other sites. This is especially true when it is recognized that Cerro's remedial activities at Sector A do not preclude other cleanups being required at any of the other sites or even Sector A itself.

At this point Monsanto anticipates making a decision during the first quarter of 1992 as to appropriate remedial action in Sector B, if any. Since that decision is now imminent, we propose the following approach:

1. During April 1992 Monsanto will advise Cerro of what remedial action, if any, Monsanto proposes to undertake in Sector B.

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2. Cerro and Monsanto will attempt to achieve a consensus on the appropriate action to be undertaken in Sector B.
3. If consensus is achieved, Monsanto will pay 50% of Cerro's documented cost in Section A (excluding the \$2,093,256 related to the stormwater diversion). In return, Cerro will pay 50% of the Sector B remedial costs. The mechanics of any payments could, of course, be subject to offset procedures and/or payment schedules. Monsanto and Cerro would also agree to work together on the other Area I sites of IEPA's Dead Creek Project. Furthermore, both Cerro and Monsanto would, as indicated in your correspondence, work cooperatively to identify and obtain contribution from other potentially responsible parties (PRPs).
4. If Monsanto and Cerro could not achieve consensus as to appropriate joint action in Sector B, each would reserve recourse to its legal remedies for cost recovery or further negotiations as each feels is appropriate.

We hope this is viewed as a positive response in our continuing efforts to amicably resolve Cerro's claims in relation to Sector A. We look forward to your review of the foregoing proposal.

On a personal note, I hope the surgery has helped to alleviate the back problems which you were experiencing. I too am experiencing problems which could interfere with attention to this matter, although mine are professional, not physical and are located in Texas, not my back. However, as a result, I have asked Joe Nassif of Coburn Croft & Putzell, One Mercantile Center, Suite 2900, St. Louis Missouri 63101, phone 314/621-2575 to assist me on several of the Sauget remedial issues. For now, please feel free to continue to work directly through me, although Joe may need to step in on short notice depending upon my Texas issues. In any case, if you have any questions concerning either Monsanto's position or the details of the proposal itself, please do not hesitate to contact me.

Very truly yours,



Stephen P. Krchma  
Environmental Counsel

cc: J. Nassif

bcc: S. Smith  
W. Boyle

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